

EXHIBIT TT.1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020(MG)
Debtors.	

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DEPOSITION OF JEFFREY A. LIPPS

New York, New York

November 19, 2012

10:13 a.m.

Reported by:
JENNIFER OCAMPO-GUZMAN, CRR, CLR
JOB NO: 27971

<p style="text-align: right;">158</p> <p>1 Lipps</p> <p>2 three times. I've read the opinion.</p> <p>3 MR. BENTLEY: Thank you, Mr. Lipps.</p> <p>4 Why don't we take a short break. I may</p> <p>5 be done, and then I know that others may</p> <p>6 have questions as well.</p> <p>7 THE WITNESS: All right.</p> <p>8 (A brief recess was taken.)</p> <p>9 MR. RAINS: Thank you.</p> <p>10 MR. BENTLEY: Thank you, Mr. Lipps,</p> <p>11 I have nothing further. But I believe</p> <p>12 one or two of my colleagues may have</p> <p>13 some questions. One or two friends in</p> <p>14 the room.</p> <p>15 EXAMINATION BY</p> <p>16 MR. NATBONY:</p> <p>17 Q. Good afternoon, Mr. Lipps.</p> <p>18 A. Good afternoon, Mr. Natbony.</p> <p>19 Q. I'm here today representing MBIA a</p> <p>20 potential objector to the settlement, and I</p> <p>21 just have a few questions for you today, if</p> <p>22 you don't mind.</p> <p>23 A. Certainly.</p> <p>24 Q. Now, in connection with reaching</p> <p>25 your opinion concerning the reasonableness of</p>	<p style="text-align: right;">160</p> <p>1 Lipps</p> <p>2 then applied the analysis that I've</p> <p>3 discussed.</p> <p>4 Q. So other than your own review of</p> <p>5 the settlement agreement, the scope of claims</p> <p>6 that were to be either included in the</p> <p>7 settlement or released was based on your own</p> <p>8 analysis?</p> <p>9 A. For purposes of my opinion, yes.</p> <p>10 Q. Now, for purposes of your opinion,</p> <p>11 did you assume that the release would not</p> <p>12 include the monoline's fraudulent inducement</p> <p>13 claims arising from insurance agreements?</p> <p>14 A. As you know from our time in court</p> <p>15 together, some of the fraud claims can fairly</p> <p>16 be described as, at least in my judgment as a</p> <p>17 defense lawyer, as claims that are basically</p> <p>18 a breach of contract that's being dressed up</p> <p>19 in fraud clothes. Having said that, I do</p> <p>20 believe that an independent fraudulent</p> <p>21 inducement claim that would survive an</p> <p>22 argument that it is nothing more than just a</p> <p>23 breach of contract dressed in fraud claims or</p> <p>24 fraud clothes would be outside of the</p> <p>25 settlement.</p>
<p style="text-align: right;">159</p> <p>1 Lipps</p> <p>2 the settlement, did you have an understanding</p> <p>3 of what claims would be released against the</p> <p>4 debtors?</p> <p>5 A. I believe I testified earlier that</p> <p>6 I saw the settlement agreement itself, the</p> <p>7 release language which discussed claims that</p> <p>8 were subject to the release as a result of</p> <p>9 the settlement, and I believe there was a</p> <p>10 provision or two that made it clear certain</p> <p>11 claims were not being settled.</p> <p>12 Q. And in addition to your review of</p> <p>13 the settlement agreement, did any</p> <p>14 representative of the debtors tell you to</p> <p>15 assume that certain claims would be released?</p> <p>16 A. In connection with this assignment?</p> <p>17 Q. Yes.</p> <p>18 A. I looked at the executed and</p> <p>19 submitted settlement agreement.</p> <p>20 Q. And did you seek any advice from</p> <p>21 anyone representing the debtors or anyone</p> <p>22 else as to what would be included in the</p> <p>23 claims that were being released under the</p> <p>24 settlement agreement?</p> <p>25 A. I read the settlement agreement and</p>	<p style="text-align: right;">161</p> <p>1 Lipps</p> <p>2 Q. Now, in conducting your analysis,</p> <p>3 did you assume that the release would not</p> <p>4 include monoline's material breach of</p> <p>5 contract claims arising under the insurance</p> <p>6 agreement?</p> <p>7 THE WITNESS: Can I have that read</p> <p>8 back?</p> <p>9 (A portion of the record was read.)</p> <p>10 MS. PATRICK: Objection, form.</p> <p>11 A. The -- I know the insurance</p> <p>12 agreements or at least some that I've looked</p> <p>13 at do have language which tracks what is in</p> <p>14 the purchase agreements with respect to</p> <p>15 repurchase demand and the repurchase process</p> <p>16 being the sole remedy, so to the extent that</p> <p>17 provision would in fact be preclusive of any</p> <p>18 independent claim other than a rep and</p> <p>19 warranty claim that a monoline would have</p> <p>20 through the repurchase process, then I think</p> <p>21 those claims would be within the settlement.</p> <p>22 The one uncertainty I have, as we</p> <p>23 sit here and have this conversation, is I</p> <p>24 know that at least in the MBIA instance the</p> <p>25 insurance agreement did provide for certain</p>

<p style="text-align: right;">162</p> <p>1 Lipps</p> <p>2 direct claims that the insurer, specifically</p> <p>3 MBIA would have and I just haven't sat and</p> <p>4 thought about whether there is a path that</p> <p>5 would allow the monoline to have something</p> <p>6 that could sound or be based on allegations</p> <p>7 or theories other than pure rep and warranty,</p> <p>8 or something that's forced into the</p> <p>9 repurchase price.</p> <p>10 Q. I guess my question though still</p> <p>11 remains is: When you do your analysis of</p> <p>12 what claims were being released, did you</p> <p>13 include in your analysis any monoline claims</p> <p>14 in the scope of claims that were being</p> <p>15 released?</p> <p>16 MR. RAINS: Objection, asked and</p> <p>17 answered.</p> <p>18 A. I don't know that I could answer it</p> <p>19 any differently than what I did. I believe</p> <p>20 that certain of the monoline claims, by</p> <p>21 virtue of the insurance agreement, are</p> <p>22 confined to the repurchase process,</p> <p>23 specifically you make a demand and then</p> <p>24 there's a determination as to whether or not</p> <p>25 that loan breaches the warranties and reps</p>	<p style="text-align: right;">164</p> <p>1 Lipps</p> <p>2 warranty claim, so to speak. Because if it</p> <p>3 could be embedded as a warranty and rep claim</p> <p>4 then, yes, I did take it into account and</p> <p>5 considered it as part of the liability that I</p> <p>6 was assessing.</p> <p>7 Q. I'm just trying to understand the</p> <p>8 scope of what you were determining was</p> <p>9 released as part of the settlement, and I</p> <p>10 understand you've said that there may be</p> <p>11 paths for it, for certain liability. But I</p> <p>12 want to know specifically, with respect to</p> <p>13 your analysis of this settlement, what, if</p> <p>14 any, claims did you actually consider in your</p> <p>15 analysis as being released?</p> <p>16 MR. RAINS: It's been asked and</p> <p>17 answered.</p> <p>18 MR. NATBONY: No, it hasn't.</p> <p>19 MR. RAINS: It's been asked and</p> <p>20 answered.</p> <p>21 MR. NATBONY: You can make your</p> <p>22 objection. I apologize.</p> <p>23 MR. RAINS: Thank you. Asked and</p> <p>24 answered about five times and you</p> <p>25 misstated his prior testimony.</p>
<p style="text-align: right;">163</p> <p>1 Lipps</p> <p>2 such that repurchase would be required. To</p> <p>3 the extent that is the monoline's claim, then</p> <p>4 absolutely I took it into account.</p> <p>5 Q. And other than that, is there any</p> <p>6 other claim that you took into account that</p> <p>7 would be released?</p> <p>8 A. Released by, by whom?</p> <p>9 Q. Released as part of the settlement</p> <p>10 agreement.</p> <p>11 A. Any other monoline claim?</p> <p>12 Q. Yes.</p> <p>13 MR. RAINS: Objection, asked and</p> <p>14 answered.</p> <p>15 A. I think I described the fact that</p> <p>16 there may be, that there is carve-outs there,</p> <p>17 in shorthand, that I would describe and I</p> <p>18 don't think the carve-out -- I think the</p> <p>19 carve-out would apply to a fraud claim if it</p> <p>20 was not subject to being characterized as a</p> <p>21 contract claim dressed in fraud clothes. And</p> <p>22 I also think there is a path that I haven't</p> <p>23 really looked at and thought about where</p> <p>24 maybe a monoline could make a direct claim</p> <p>25 and argue that's not embedded as a rep and</p>	<p style="text-align: right;">165</p> <p>1 Lipps</p> <p>2 A. I don't think I could change what</p> <p>3 I've said before, at least I don't intend to,</p> <p>4 if somehow you can parse through the words.</p> <p>5 To the extent the trusts or trust where there</p> <p>6 was Financial Guaranty Insurance that was</p> <p>7 issued, I evaluated the rep and warranty</p> <p>8 claims in those trusts as being released in</p> <p>9 the settlement. I recognize in this report</p> <p>10 that there may be independent tort claims or</p> <p>11 some independent claim, independent of rep</p> <p>12 and warranty that would arguably not be</p> <p>13 released, and I didn't evaluate those, and we</p> <p>14 had a discussion about the insurance</p> <p>15 agreement, as you raised, where I seem to</p> <p>16 recall there may be a path. But I haven't</p> <p>17 looked at that in a while and I haven't</p> <p>18 reached a conclusion, as I sit here today,</p> <p>19 whether that path would in fact be released</p> <p>20 because it's dependent on rep and warranty or</p> <p>21 individual loan reps being breached.</p> <p>22 Q. Do you recall having any discussion</p> <p>23 at the time the settlement was being</p> <p>24 considered as to whether the allocation</p> <p>25 methodology was reasonable with respect to</p>

<p style="text-align: right;">174</p> <p>1 Lipps</p> <p>2 defending and the nature of those claims, and</p> <p>3 to the extent it's rep and warranty based, it</p> <p>4 was part of what I was evaluating in terms of</p> <p>5 whether the settlement was reasonable and</p> <p>6 fair.</p> <p>7 Q. And when you say rep and warranty</p> <p>8 based, do you mean rep and warranty based</p> <p>9 irrespective of whether it's a rep and</p> <p>10 warranty contained in the purchase and sale</p> <p>11 agreement or the insurance agreement?</p> <p>12 A. It would be any loan level rep in</p> <p>13 these securitization documents to the 392</p> <p>14 trusts. Typically they are in the sale</p> <p>15 agreement. I can't remember, as I sit here,</p> <p>16 whether the insurance agreement replicated</p> <p>17 it, in terms of listing them or simply</p> <p>18 incorporated in the monoline instance, but</p> <p>19 it's basically the rep and warranties that</p> <p>20 are given in connection with the sale and</p> <p>21 deposit of the loan, individual loans into</p> <p>22 the trust.</p> <p>23 Q. What was your understanding when</p> <p>24 you did your analysis as to what monoline</p> <p>25 claims were being carved out of the</p>	<p style="text-align: right;">176</p> <p>1 Lipps</p> <p>2 all. I observed when I read the settlement</p> <p>3 that there were claims that were not included</p> <p>4 within the release for monolines. I had</p> <p>5 specific familiarity with, in at least the</p> <p>6 case you and I have been litigating, fraud</p> <p>7 claims. I'm sure if I looked at -- well, I'm</p> <p>8 not sure. If I looked at the amended</p> <p>9 complaint, there may be other claims out</p> <p>10 there, but the core of what was being alleged</p> <p>11 in the MBIA case was rep and warranty based.</p> <p>12 Q. Now, Mr. Lipps, I think you talked</p> <p>13 earlier about common pathways to the rep and</p> <p>14 warranty liability; do you remember using</p> <p>15 that term?</p> <p>16 MR. RAINS: Objection, vague and</p> <p>17 ambiguous.</p> <p>18 A. I don't know whether I actually</p> <p>19 used "pathways." I've used pathways before,</p> <p>20 but I think I identified in paragraph 16, at</p> <p>21 least that was one spot where there are --</p> <p>22 there are certain concepts that I've observed</p> <p>23 in the defense of these cases that plaintiffs</p> <p>24 are asserting in terms of breaches of</p> <p>25 warranties and reps at a one level.</p>
<p style="text-align: right;">175</p> <p>1 Lipps</p> <p>2 settlement?</p> <p>3 A. The best example I can give you is</p> <p>4 arguably the fraudulent inducement claim, to</p> <p>5 the extent it's not found to be essentially a</p> <p>6 breach of contract claim dressed up in fraud</p> <p>7 clothes.</p> <p>8 Q. And other than that, is there any</p> <p>9 other claim that you considered in your</p> <p>10 analysis for monolines that was in the</p> <p>11 released?</p> <p>12 A. I didn't really do that in my</p> <p>13 analysis, as you know. I started my analysis</p> <p>14 based on the aspect of the release that</p> <p>15 related to rep and warranty claims, and based</p> <p>16 on my analysis, I concluded that that in and</p> <p>17 of itself is a basis for the release was fair</p> <p>18 and adequate and within an appropriate range.</p> <p>19 Q. So is it fair to say that in doing</p> <p>20 your analysis of what was reasonable, you did</p> <p>21 not consider what was or was not released</p> <p>22 with respect to monolines?</p> <p>23 MR. RAINS: Objection, misstates</p> <p>24 his testimony.</p> <p>25 A. No, I don't think that's fair at</p>	<p style="text-align: right;">177</p> <p>1 Lipps</p> <p>2 Q. You would agree though that each</p> <p>3 securitization involves a unique set of</p> <p>4 mortgage loans, correct?</p> <p>5 A. I would agree if the securitization</p> <p>6 process is done properly there are different</p> <p>7 loans in each securitization pool.</p> <p>8 Q. And each securitization has a set</p> <p>9 of transaction documents that are separately</p> <p>10 negotiated and structured, correct?</p> <p>11 A. There will be separate documents</p> <p>12 associated with each securitization, yes.</p> <p>13 Q. And each trust that has</p> <p>14 securitization will have a securitization in</p> <p>15 a particular shelf, correct?</p> <p>16 A. Ask me that again.</p> <p>17 Q. You are familiar with that the</p> <p>18 ResCap had different shelves of products,</p> <p>19 correct?</p> <p>20 A. I am aware that they had shelves.</p> <p>21 Q. And each securitization, that would</p> <p>22 be part of a trust would involve a set of</p> <p>23 loans that is in a particular shelf, correct?</p> <p>24 A. RFC made an effort to brand its</p> <p>25 products by shelf that, for example, the</p>